

**Board Meeting Minutes
January 29 & 30, 2004**

**Board for Professional Engineers and Land Surveyors
Casa Munras Hotel
700 Munras Avenue
Monterey, California 93942-1351
(831) 375-2411**

Thursday, January 29, 2004

Board Members Present: Gregg Brandow (President), Arthur Duffy, James Foley, David Fruchtman, Robert Jones, William Roschen, Millicent Safran, William Schock, Elizabeth Warren, Dale Wilson, and Edward Yu.

Board Members Absent: Cindy Tuttle and Michael Welch

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Nancy Eissler (Attorney General Liaison Analyst), Debbie Thompson (Budget Analyst), and Cindy Fernandez (Executive Analyst).

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Brandow at 1:15 p.m. Roll call was taken, and a quorum was established. Mr. Schock arrived at 1:25 p.m.

2. Public Comment

Mr. C deBaca, representing the California Land Surveyors Association (CLSA), requested the Board's support in CLSA's efforts to introduce legislation to repeal the law allowing the Board to issue temporary authorizations to practice land surveying. Mr. Duke advised that the Board could not take action on this item of proposed legislation because it was not on the Board's noticed agenda. President Brandow advised that the Board would discuss it at its March meeting.

Mr. Ramus, representing PATCA and CSIA, spoke regarding Title Act Study. He stated that the state should maintain an open environment that allows technology to develop. He stated that his organizations have previously provided written comments to the Task Force, and they have worked with professional

engineering associations such as the California Legislative Council of Professional Engineers (CLCPE). He stated that he strongly supports allowing overlap because that is the root of the problems. He stated that he wants to make sure that other technology professionals are not prevented from doing their work; he stated that he wants an exemption in the law for other technical professionals practicing in their areas of expertise. Mr. Ramus stated that Ted Fairfield, a former Board President, and Hal Turner, a former Executive Officer, told him ten years ago that they were going to put him out of business. He stated that the public members have to protect the economy. He stated that overlap is essential, especially for scientists and other technical professionals. He stated that he wants to work with the Board and the Legislature to recognize that all technology professionals should be allowed to practice their profession. Mr. Ramus stated that if the Title Acts are converted to Practice Acts, others will not be able to do their work. He stated that addressing this issue through definitions will not work. He stated that the Board should protect the public by allowing scientists and technology professionals to do their work and to work with engineers. He stated that the expansion of the industrial exemption solved about 80% of the problem, but it does not cover non-private companies or civil engineering. Mr. Ramus stated that his organizations want to work with the Board to implement overlap, to allow other professionals to do their work, and to not forget other professionals.

Mr. Foley asked Mr. Ramus why he did not get licensed as a Chemical Engineer. Mr. Ramus stated that he is not an engineer and that engineering is not his profession, so he should not have to be licensed as a Chemical Engineer.

Mr. Ramus stated that he is often contacted by Civil Engineers and that responsible charge is an important issue.

Mr. Jones asked Mr. Ramus if he had encountered any conflicts in his profession as a chemist that would be considered unlicensed practice. Mr. Ramus said that he had not. Mr. Jones asked Mr. Ramus if he knew of any specific cases where this had occurred; Mr. Ramus said that he did not. Mr. Jones asked why Mr. Ramus believed it would become an issue. Mr. Ramus stated that the legislators do not understand science issues so his organizations must educate them. He stated that the Board has been misused in the past to provide turf for one group in opposition to other groups.

Mr. Duffy asked Mr. Ramus who he believed should decide on an individual's competence or if that was an individual decision. Mr. Ramus stated that some individuals do think they are competent when they are not and that he believes that the marketplace should determine an individual's competence unless the person's work directly involves the public. Mr. Duffy asked Mr. Ramus if he believed there was a need to regulate the practice of civil engineering. Mr. Ramus stated that civil engineering in the areas of multi-story structures, bridges, roads, traffic, houses, schools, and hospitals should be regulated. He

stated there were many examples of where regulation was justified, but he does not believe that the Board needs to regulate the development of microprocessors. He stated that the Board can end up in areas where it should not be.

Mr. Fruchtmann asked Mr. Ramus if he believed there was any value to the Chemical Engineer title. Mr. Ramus stated that it was a marketing tool and that public agencies want someone to be in responsible charge and it is usually a Civil Engineer.

Mr. Duffy asked Mr. Ramus if he believed that the marketing tool meant that just the title should be regulated and not the practice. Mr. Ramus stated that chemical testing falls under civil engineering, which does not make sense to him.

Mr. Ramus stated that there are huge areas of overlap.

10. Title Act Study Report & Task Force (Possible Action)

a. Final Recommendations of the Task Force regarding THE ENGINEERING TITLE ACT STUDY: The Practice/Title Act Distinction and Protection of Public Health, Safety and Welfare (referred to as “the Study”) to be Presented to the Board for Professional Engineers and Land Surveyors [Possible Action]

Stephen Lazarian, Chairman of the Title Act Study Task Force, provided a handout of the Task Force’s Final Recommendations.

Mr. Lazarian explained to the Board the Business and Professions Code sections 6704 and 6730 state that the practices of civil, electrical, and mechanical engineering are regulated and that Section 6717 allows the Board to define by regulation all branches of engineering except civil, electrical, and mechanical.

Mr. Lazarian provided the following information to the Board as background of the Title Act issue:

In 1968, the Legislature gave the Board the authority to create the Title Act disciplines; four were initially created, and by 1985, there were thirteen. There were five others that were proposed but rejected by the Board. In the mid-1980s, the Legislature decided that boards should not be able to create new disciplines of licensure, and so the authority to create new Title Acts was taken away from the Board. However, what had been created was a two-class system – Practice Act versus Title Act. In the early 1990s, former Board member Rich Johnson wrote a paper addressing what he saw as the problems created by this two-class system of licensure. The Board then began questioning what purpose was served by Title Acts. At its first strategic planning meeting, held in Ontario in

February 1994, the Board reviewed the issue of licensure of engineers. It looked at various methods used by other states, such as generic registration. It also discussed eliminating the Title Acts. There was definite concurrence among the Board members at that meeting that this two-class system was not good and that protection of only the title was essentially useless for enforcement purposes. Following this meeting, the Board began holding hearings throughout the state regarding its proposal to rewrite the Professional Engineers Act (the PE Rewrite). The main thrust of this proposal was to eliminate all of the Title Act disciplines entirely, not to convert them into Practice Acts. However, the PE Rewrite did not go forward. At the same time, the Board's first sunset review hearing was held before the Joint Legislative Sunset Review Committee (JLSRC). The JLSRC agreed with the Board that the two-class system of licensure was not right and said that the Board should do something. However, the Board believed it had already studied the issue and had presented a solution in its PE Rewrite proposal, which had not been accepted. Therefore, the JLSRC decided that an outside consultant should perform a study of the Title Acts. It was through the sunset legislation that Section 6704.1 was added; this section mandated that a study of the Title Acts be conducted by an outside consultant, under the direction of the Department of Consumer Affairs (DCA). The Institute for Social Research (ISR) of the California State University, Sacramento, was selected by DCA to perform this study. ISR completed the Title Act Study in 2003, and it was presented to the Legislature. The JLSRC asked the Board, as part of its sunset review this year, to provide recommendations as to what should be done, based on the information and recommendations contained in the Title Act Study by ISR. The Board appointed a Task Force to review the report, obtain input from the public, and to make recommendations to the Board. This Task Force was made up of current and former Board members, representatives from the JLSRC staff and DCA, licensed engineers, and a representative of the Center for Public Interest Law. The Task Force held five meetings and took public comment at all of them; there was quite a bit of worthwhile comments submitted.

Mr. Lazarian advised that the Task Force's goal was to develop recommendations that would be palatable to both the Board and the Legislature. He explained that there were four main areas that were addressed: overlap and responsible charge; the Title Acts; collection of data and reporting of legal actions; and creation of new disciplines.

Overlap and Responsible Charge (Recommendations 1A and 1B)

Mr. Lazarian explained that the Task Force believed that ISR's recommendation regarding overlap was too sweeping. The Task Force agrees with the concept that there should be some overlap, but it should be limited. The Task Force recommends that overlap be allowed as long

as it is “in connection with and incidental to” the work. These are the important concepts which create a nexus test – the overlap work must be connected to the overall work and incidental to it. The Task Force also recommends that Board Rule 415, regarding practicing within one’s area of competence, should be moved from regulation into statute and should be revised to connect to the issue of overlap, so that the overlap, in addition to being “in connection with and incidental to,” must also be within the licensee’s area of competence.

Mr. Duffy questioned who would decide the issue of competency and whether it would include an examination component. Mr. Lazarian explained that there could not be a set definition of the area of competency in a vacuum. President Brandow noted that the area of competency is usually determined by education, experience, and examination. Mr. Lazarian stated that there is usually a higher standard put on someone with education and experience.

Mr. Fruchtmann asked how this recommendation would affect the existing overlap allowed for civil engineers. Mr. Lazarian explained that the intent of the recommendation was not to disturb existing civil engineering overlap but noted that the Task Force did not specifically address the issue of overlap for civil engineers because it was not part of the Title Act Study.

Tom Stout, representing the California Society of Professional Engineers (CSPE), commented that Board Rule 415 does not include an examination component.

Mr. Lazarian explained that the Board would have the ability to change the components included in Board Rule 415 when it was moved to statute, if the Board determined any changes were appropriate. Mr. Lazarian stated that the recommendation from the Task Force is that the idea of practicing in one’s area of competence needs to go hand-and-hand with overlap.

Mr. Lazarian explained that the Task Force recommends that any discipline that is a Practice Act should have the same requirements for responsible charge as the current Practice Acts.

Title Acts (Recommendation 2)

Mr. Lazarian advised that the Task Force agreed that Title Acts do not protect the public and should, therefore, either be converted to Practice Acts or eliminated. He explained that the only way the Title Acts can be converted to Practice Acts is for them to go through the legislative Sunrise process; through the Sunrise process, the Legislature would decide which Title Acts should be converted to Practice Acts and which ones should be eliminated. The Task Force recommends that all of the Title Acts go

through the Sunrise process at the same time; the end result would be that there would be no more Title Acts – they would either be Practice Acts or not regulated.

Mr. Duffy questioned what the public gains from the Title Acts. He stated that they seem to show a certain level of competency and protection of public, so that the Title Acts are protection for public. He stated that it did not seem to him that the Task Force had ever answered why any of the Title Acts should be eliminated. He stated that without the Title Acts, there is no control or oversight and no way for the public to judge a person's qualifications.

Mr. Lazarian noted that eight out of the nine Title Acts are tested nationally. He explained that when the Board eliminated the Corrosion, Quality, Safety, and Manufacturing Engineer Title Acts, it was because it was determined that there was no issue of public protection.

Mr. Duffy expressed concern with the Legislature deciding which Title Acts should be eliminated.

Mr. Lazarian pointed out that there is no real meaningful purpose of just regulating the title because the worst enforcement action the Board can take is to take away the right to use the title; the Board cannot prevent the person from continuing to practice. The Board spends its limited resources just to take away the right to use the title.

Mr. Fruchtmann stated that nothing prohibits the Title Acts from taking the Professional Engineer examinations.

Mr. Lazarian provided the example that an Agricultural Engineer takes a national examination, but only the use of the title "Agricultural Engineer" is regulated, while the practice of agricultural engineering is not regulated. He explained that the benefit to regulating the practice is that unlicensed people will be regulated. Mr. Lazarian expressed the opinion that the licensees in the Title Acts will probably be in support of converting to Practice Acts. Mr. Lazarian explained that the conversion to Practice Acts must go through the legislative Sunrise process and, while that does take it out of Board's control, the Board will be able to make recommendations to the Legislature during the process. Mr. Lazarian stated that he believes there is a tremendous amount of motivation on part of Legislature to get this done expediently.

Ms. Safran asked if the Board would need to recommend the actual language to be placed in legislation. Mr. Lazarian explained that the JLSRC would introduce the legislation, but would work with the Board throughout the process on the actual language.

Mr. Lazarian pointed out there would not be a need to create brand new definitions for the Title Act disciplines because the definitions already exist in Board Rule 404. The Task Force recommends that the existing definitions be used and refined as needed.

Mr. Fruchtmann questioned why the Task Force was not recommending generic registration. Mr. Lazarian stated that the Task Force believed it was best to begin with remaining discipline-specific, but allow all disciplines to have limited overlap; maybe sometime in the future it could then change to completely generic registration.

Collection of Data and Reporting of Legal Actions (Recommendations 3A, 3B, 4, and 5A)

Mr. Lazarian explained that several of the ISR recommendations were that the Board should collect and maintain various types of data about its applicants and licensees and the engineering profession. It appears that ISR was not able to get all of the information it wanted because there was no central repository for the information; it seems that this was the genesis of many of these recommendations, with the exception of the recommendation that the Board should require the reporting of legal actions (Recommendation 4).

Mr. Lazarian advised that this Board is one of few boards that does not require any kind of reporting of legal actions by its licensees. In the last few years, the Legislature has made it very clear that it is very intent on having all boards do this. Therefore, the recommendation of the Task Force is that the Board should require the reporting of legal actions from its licensees. Mr. Lazarian explained that the Board will have quite a bit of opportunity to be involved in developing the actual language – the who, what, how, etc. – with the Legislature. President Brandow noted that the Board would be able to use the experience of other boards in developing the language. Mr. Lazarian noted that it is very difficult to impose requirements on third parties, such as insurance companies. He also noted that the Board could probably construct nexus requirement in the language; those would be things that would have to be decided by the Board regarding the actual language.

Mr. Fruchtmann stated that he thought it was a good idea but it would have to be constructed carefully.

Mr. Lazarian explained that what is done with the information collected by the Board did not need to be decided now. Ms. Eissler explained that the information collected by other boards is not disclosed to the public, except for the Medical Board and, even then, the Medical Board's laws are very specific and very limited about what information is disclosed and how and

when it is disclosed. She explained that most boards have forms that its licensees fill out that just provides for general reporting; the licensees do not submit the actual court documents unless the boards later request it.

Mr. Duffy stated that he sees all of the reporting recommendations as solutions looking for a problem.

Mr. Foley questioned how confidentiality agreements in settlements would be affected by a reporting requirement. Mr. Lazarian explained that a requirement to report to a licensing agency usually overrides the confidentiality agreement since the reporting is to a specific agency for a specific purpose.

Mr. Lazarian explained that the whole issue of reporting grew out of missed enforcement opportunities in general, not just with engineers. Some boards were refusing to investigate complaints if a civil court action was involved, and the Legislature did not like that. Mr. Lazarian stressed that the Board will end up with some form of reporting requirement so it needs to work with the Legislature from the beginning to develop the appropriate language. He noted that it is getting to the point where profiles of individuals in any profession will have to be available to the public.

Mr. Duffy stated that he thinks the Board could be facing real problems and he is not sure it is right to turn it over to the Legislature at this point, but he acknowledged that the Board may be put in that position.

Ms. Christenson explained that the Legislature likely will not have a problem with the Board saying that it needs to continue studying the recommendations regarding collection of data, except for the reporting of legal actions recommendation. This requirement will be done for the Board by the Legislature if the Board does not recommend it on its own; the Board needs to work with the Legislature on this issue. Mr. Lazarian concurred that the collection of data seems to be an internal issue for the Board to study first and the Legislature does seem to be willing to accept that the Board is continuing to study those issues; however, this does not include the reporting of legal actions. This issue needs to be addressed now and the Board should get in front of it.

Mr. Jones asked what the time frame was the Board to submit the recommendations to the Legislature. Ms. Christenson explained that the next Sunset hearing would be held at the end of March, so the Board could discuss and finalize its recommendations at its March 5, 2004, Board meeting.

Mr. Fruchtmann asked if the Task Force was recommending that the Board introduce legislation to require reporting of legal actions. President Brandow advised that the Task Force was recommending that the Board require this of its licensees, which would require legislation. He stated that Bill Gage had indicated that he would work with the Board to develop the language based on the experiences of other boards.

Mr. Duffy stated that it seems to him that the Board should make the decision and recommend it to the Legislature.

President Brandow advised that the Board needs to show a willingness to work on it and to be consistent with other professions, otherwise it looks like the Board is not willing to work with the Legislature.

Mr. Foley stated that he thinks other groups, such as professional associations and governmental agencies, will bring up the negatives of a reporting requirement to the Legislature. If the Board makes the recommendation first, then the Board will be able to cooperate with the Legislature and work on the language.

Mr. Wilson stated that the Legislature is not interested in damaging the profession but in how the Board protects the public. Mr. Jones stated that the Board needs to consider the future and how it is protecting the public.

Mr. Duffy stated that he does not think turning over to everything to the Legislature en masse is good; he believes the Board should be specific on Recommendations 3A, 3B, and 4 and work with the Legislature. He stated that if it is not the right idea to convert the Title Acts, then there should not be legislation. He stated that the Board should decide, rather than letting the Legislature decide.

Mr. Jones stated that he views the issue of the Title Acts as separate from the reporting of legal actions issues. He stated that the reporting can have variety of uses. He questioned why the Board would not include all information and provide it to public since it is the Board's duty to protect the public. He stated that with respect to the Title Acts, he would rely on the professional members. He stated that it is important to try to find a balance and be fair to all.

Mr. Duffy and Mr. Fruchtmann expressed concern with the reporting requirements and how it would work with large companies and governmental agencies.

Mr. Lazarian pointed out that most legal actions would already be on record through the courts and that the licensees would just have to report to the Board. He pointed out that the Legislature would be unlikely to

accept that the Board just wanted to require reporting criminal actions, without the reporting of civil actions.

Mr. Schock pointed out that “reporting” does not mean “disclosing.” Mr. Lazarian agreed that most boards do not disclose the information to the public; it is used as a proactive enforcement tool to initiate complaint investigations if warranted.

Creation of New Disciplines (Recommendation 5B)

Mr. Lazarian advised that the Task Force recommends that the issue of creating new disciplines based on national examinations not currently administered in California should be looked at by the Board in the future and should not be combined with the Title Acts. Any new discipline would have to go through the Sunrise process, but the creation of a new discipline would require more study than the review of the existing Title Acts, so they should be dealt with separately.

MOTION: Mr. Foley/Ms. Safran moved to adopt the Final Recommendations of the Title Act Study Task Force and submit them to the Joint Legislative Sunset Review Committee and the Department of Consumer Affairs.

Mr. Foley stated that he made the motion because the Board needs to move forward and work with the Legislature; the Board could end up doing more damage and become less effective later on in the process if the Board appears to be too picky and unwilling to work with the Legislature.

Mr. Roschen suggested adding to Recommendation 4 that the Board would determine the actual language.

Mr. Lazarian noted that, in context with the Task Force recommendation, the Board will have to work with the Legislature on the language; the Legislature will have very definite ideas regarding reporting, so the Board will need to work within that context.

SUBSTITUTE MOTION: Mr. Jones/Mr. Duffy moved to accept the report from the Title Act Study Task Force and give the Board the opportunity to reflect on the report and then prepare its own report to timely present to the Legislature.

Mr. Fruchtmann stated that he thinks the Board does need time to review the recommendations.

Ms. Safran stated that she sees that as the fast track to sunset.

Mr. Foley stated that the Board had a blue ribbon committee of Board members, engineers, legislative staff, and consumer representatives. The JLSRC will see the ISR and Task Force recommendations. If the appearance is that the Board has made too many changes, then that will be bad. The actual language can change once it is at the Legislature, so the Board needs to get the best deal it can, otherwise it will hamper the Board's getting what it wants.

Mr. Wilson pointed out that all of the legislative proposals will come to the Board for review through the legislative process.

Mr. Jones stated that his motion simply gives the Board the opportunity to consider the recommendations before giving them to Legislature. He stated that he is not necessarily saying that any of the recommendations should be changed, just that the Board should have time to review them first.

Mr. Duffy stated that these are very serious issues that will affect engineers and the public and that this is the first time the Board has had an opportunity to see the final recommendations from the Task Force.

Mr. Lazarian advised that there accepting the Task Force recommendations would accomplish two things – it would show that the Board had relied upon the effort of its Task Force and would recognize the contributions of Bill Gage and the other members in discussing, negotiating, and developing the recommendations; and it would send a message to the Legislature that the Board was in conceptual concurrence with the recommendations and is willing to work with the Legislature to develop the appropriate legislative language.

Mr. Fruchtmann stated that he believes the reporting requirement is very important and should be discussed.

Mr. Lazarian pointed out that the Board would be able to discuss the actual language and work that out with the Legislature. He stated that the real issue is if Board does not agree with reporting requirement or any of the other recommendations.

Mr. Schock stated that it seems to him that the Board should simply say that it agrees with the concept of the reporting requirement and are ready to discuss it further with the Legislature.

Mr. Duffy stated that he sees the issue of the Title Acts as the real issue and the question is whether the Board should provide input to the Legislature upfront or at the end of the process.

Richard Markuson, representing the Consulting Engineers and Land Surveyors of California (CELSOC), questioned if the Board expected all of the Title Acts to go through the Sunrise process simultaneously during the current legislative session. Ms. Christenson explained that the Sunrise hearings would be held during the fall/winter interim session, just as the Sunset hearings usually are.

Mr. Markuson stated that CELSOC believes that the Board should present actual language to the Legislature rather than reacting to legislative proposals.

President Brandow suggested that the Board could add positive statements regarding any concerns on any of the recommendations and how it would work with the Legislature to address them.

VOTE: 6-5, Substitute Motion carried. President Brandow, Mr. Duffy, Mr. Fruchtman, Mr. Jones, Mr. Roschen, Ms. Warren – aye; Mr. Foley, Ms. Safran, Mr. Schock, Mr. Wilson, Mr. Yu – nay.

Pursuant to the Board's Operating Procedures, because of the passage of the Substitute Motion, there was no need to vote on the original motion.

President Brandow again advised that the Board will be able to discuss this matter at its March meeting, but it will have to finalize its recommendations at that meeting.

Ms. Christenson advised that the Board needs to focus on the concepts that it wants to present to the Legislature. She also advised that Mr. Gage has offered to come to the next meeting to answer any questions the Board may have about the process.

Ms. Safran stated that she is concerned with annoying the JLSRC because the Board was almost sunsetted last time that happened.

Mr. Foley cautioned that the Board cannot appear to be protecting the engineers. He pointed out that consumers are demanding all sorts of disclosures these days.

Mr. Lazarian advised that Mr. Gage will be good to work with; he understands the issues and does not want to upset world as it is for people who are not doing engineering.

Mr. Ramus stated that his organizations are trying to find a way to be supportive of the process.

Mr. Markuson commented that the Task Force Recommendation 2 varies from the discussion at the Task Force meeting in San Diego in December because, at that meeting, Julianne D'Angelo Fellmeth seemed to indicate that each Title Act would be reviewed separately. Mr. Markuson stated that some of the Title Acts will be lost if they are all considered at once. He recommended that the Board review each Title Act separately and make recommendations to the Legislature. With regard to the collection of data recommendations, Mr. Markuson noted that the budgetary and staffing issues were no longer mentioned, as they had been in the draft recommendations. He also stated that the reporting requirement did not seem to consider staffing issues. He stated that his organization would need to have a better understanding of what the information will be used for, but at this time, his organization has philosophical problems with such a requirement.

Mr. Lazarian thanked Gregg Brandow, Julianne D'Angelo Fellmeth, Bill Gage, Allen Green, John Maloney, Vincent Marchand, and Edward Yu for serving as members of the Title Act Study Task Force.

The Board recessed at 3:50 p.m.

Friday January 30, 2004

Board Members Present: Gregg Brandow (President), Arthur Duffy, James Foley, David Fruchtman, Robert Jones, William Roschen, Millicent Safran, William Schock, Elizabeth Warren, Dale Wilson, and Edward Yu.

Board Members Absent: Cindy Tuttle and Michael Welch

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Nancy Eissler (Attorney General Liaison Analyst), Debbie Thompson (Budget Analyst), and Cindy Fernandez (Executive Analyst).

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Brandow at 8:35 a.m. Roll call was taken, and a quorum was established. Mr. Jones arrived at 8:45 a.m.

2. Public Comment

Tom Stout, representing the California Society of Professional Engineers (CSPE), spoke regarding the Title Act Study. He stated that Santiago Calatrava, to whom the Board had issued a temporary authorization many years ago, was recently in the news because he had the winning design for the new train station at the World Trade Center in New York. Mr. Stout stated that this raises the question of the importance of written examinations versus portfolio reviews. He stated that the Board has mixed messages on examinations – it will waive the EIT, it does not require retesting after a certain period of time, and Board Rule 415 does not include an examination component, but it seems to improperly hold grandfathering against the Title Acts. He advised that the definition of engineering in the dictionary speaks to the application of science for the benefit of mankind; it does not matter what field, if it is done poorly, then people get hurt. He stated that the courts have decided that licensing examinations must be job-related; that means each branch has to have its own examination. Mr. Stout stated that the Board actually licenses some engineers and certifies others using national examinations. He stated that NCEES and the National Society for Professional Engineers (NSPE) favor licensing before certification, but the actual practice of NCEES is going away from that to specializing the examinations through depth modules and elimination of some disciplines of examinations. He stated that there are hundreds of different degree programs but only about twenty different examinations.

President Brandow asked if Mr. Stout favored the direction the Task Force had gone in. Mr. Stout advised that he generally did, but he was concerned about the Sunrise questionnaire because it was very daunting and because the various disciplines had gone through a similar process when the Title Acts were first created. Mr. Wilson explained that, based on the discussions at the Task Force meeting, it appeared that the Title Acts would not need to complete the full Sunrise questionnaire.

Mr. Foley noted that if the Board and the professional associations seem to be cooperative, then the process will go much better.

3. Closed Session

The Board went into closed session at 8:50 a.m.

4. Open Session to Announce the Results of Closed Session

Ms. Christenson reported that the Board approved the following cutscores for the October 2003 examinations:

• EIT	score of 70 out of 100
• LSIT	score of 70 out of 100
• Agricultural	score of 70 out of 100
• Chemical	score of 70 out of 100
• Control System	score of 70 out of 100
• Electrical	score of 70 out of 100
• Fire Protection	score of 70 out of 100
• Industrial	score of 70 out of 100
• Manufacturing	score of 70 out of 100
• Mechanical	score of 70 out of 100
• Metallurgical	score of 70 out of 100
• Nuclear	score of 70 out of 100
• Petroleum	score of 70 out of 100
• Traffic	62 out of 116 possible points
• Civil 8-hour	score of 70 out of 100
• Seismic Principles	136 out of 281 possible points
• Engineering Surveying	162 out of 287 possible points
• Structural	650 out of 1500 possible points
• Geotechnical	445 out of 900 possible points

Ms. Christenson reported that the Board adopted the results of the take-home examinations for the candidates who had previously passed the 8-hour portion of the indicated examinations.

Ms. Christenson reported that the Board adopted the Proposed Decision regarding George Ray Dickey; the Default Decisions regarding Keith Masuda

and Christopher Russell; and the Stipulations regarding Paul Bartholow, Mark T. Chin, James Greathouse, Iyad Naffa, and Gary Timothy Wong.

Ms. Christenson reported that the Board discussed pending litigation as noticed, specifically Lawrence B. Karp v. Board for Professional Engineers and Land Surveyors, et al., San Francisco Superior Court Case No. 402996, and Ladislav Peter Petrovsky v. Board for Professional Engineers and Land Surveyors, Los Angeles Superior Court Case No. BS080673, and Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492 and, Michael Laroue v. Board for Professional Engineers and Land Surveyors, et al., Court of Appeal, Second Appellate District, Division Two, Case No. B163358 (Los Angeles Superior Court Case No. BS076838)

12. Administration

a. Fund Condition (Possible Action)

No additional report was given.

b. FY 2003/04 Budget (Possible Action)

No additional report was given.

c. Land Surveyor Consultant Contract (Possible Action)

No additional report was given.

d. 2004/05 Budget Change Proposals (Possible Action)

No additional report was given.

e. Pass Through to NCEES Processing of National Exam Application Fees (Possible Action)

Mr. Roschen reported that staff will identify the specific DCA and Board system changes needed for the two fee options identified to determine the feasibility of this proposal. This information will be provided at the June Board meeting.

f. Publication Review (Possible Action)

Mr. Roschen reported that staff will be doing research on the Board's publications and reporting on it at the April Board meeting.

g. Board Website Presentation

No additional report was given.

5. Election of Vice-President (Possible Action)

MOTION: Ms. Safran/Mr. Fruchtmann moved to elect Mr. Foley as Vice-President of the Board for the remainder of this fiscal year.

VOTE: 10-0, motion carried. Mr. Jones was not present for this vote.

6. Approval of Consent Items (Possible Action)

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

a. Approval of the Minutes of the November 14, 2003, Board Meeting

MOTION: Mr. Wilson/Mr. Roschen moved to approve the minutes of the November 14, 2003, Board Meeting

VOTE: 10-0, motion carried. Mr. Jones was not present for this vote.

b. Approval of Candidates for Certification/Licensure (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)

MOTION: Mr. Fruchtman/Ms. Safran moved to approve candidates for licensure and certification based on examination results, including successful appeal results and take home examination results, approved in closed session.

VOTE: 10-0, motion carried. Mr. Jones was not present for this vote.

7. Approval of Delinquent Reinstatements (Possible Action)

MOTION: Mr. Yu/Mr. Duffy moved to approve the Delinquent Reinstatements as follows:

Civil

1. RAUL RASCO

Reinstate applicant's civil engineer license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

Electrical

1. KEN N. SARUWATARI

Reinstate applicant's electrical engineer license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

2. NOAH TAI

Reinstate applicant's electrical engineer license once he takes and passes the Board's Laws and Rules Examination.

Land Surveyor

1. JAMES GERALD DONAHUE

Reinstate applicant's land surveyor license once he takes and passes the California State-Specific Professional Land Surveyor Examination, the Board's Laws and Rules Examination, and pays all required delinquent renewal fees.

Mechanical

1. MICHELLE A. BLANCO

Reinstate applicant's mechanical engineer license once she takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

2. MELVIN E. HARTWIG

Reinstate applicant's mechanical engineer license once he takes and passes the Board's Laws and Rules Examination.

3. FREDERICK M. LEWIS

Reinstate applicant's mechanical engineer license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

4. A. HAMDY OSMAN

Reinstate applicant's mechanical engineer license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

VOTE: 10-0, motion carried. Mr. Jones was not present for this vote.

8. Comity and Temporary Authorization Applications (Possible Action)

MOTION: Ms. Safran/Mr. Yu moved to approve the Comity List on Pages 33 and 34 of the agenda.

VOTE: 10-0, motion carried. Mr. Foley was not present for this vote.

Richard W. McCoy addressed the Board regarding his request for a temporary authorization to practice civil engineering.

MOTION: Mr. Duffy/Mr. Wilson moved to grant a 180-day Temporary Authorization to Richard W. McCoy.

VOTE: 11-0, motion carried.

A handout was provided regarding the request for an additional 180-day temporary authorization from Michael W. Whitney.

MOTION: Mr. Duffy/Mr. Fruchtmann moved to approve an additional 180-day Temporary Authorization to Michael W. Whitney.

VOTE: 9-2, motion carried. Mr. Foley and Ms. Safran, nay.

9. Policy on Request for Declaratory Decisions (Possible Action)

Mr. Duke provided the Board with information on the process for requesting and issuing Declaratory Decisions pursuant to the provisions of the Government Code and whether the Board should consider issuing Declaratory Decisions if requested. Mr. Duke advised the Board that no board or bureau within DCA has issued a Declaratory Decision to date, nor has any other agency. Mr. Duke explained that a person can submit a written request for a Declaratory Decision and must provide specific, undisputed facts; the Declaratory Decision is then binding on the parties. He explained that the Board must hold a hearing and provide notice to all interested parties; however, if the Board takes no action on the request within 60 days of its submittal, then it is deemed to have been denied by the Board. He stated that there are several problems with the laws and regulations, such as internal inconsistencies, that make them unclear; for example, some laws seem to have that Declaratory Decisions are not underground regulations, while other laws seem to contradict that. Mr. Duke also explained that the law allows the Board to adopt its own regulations regarding the procedures to be followed for requesting and issuing a Declaratory Decision or to simply follow the regulations adopted by the Office of Administrative Hearings. Mr. Duffy noted that Declaratory Decisions seemed to be quasi-regulations without having to go through the regulatory process, which might make them easy to challenge. Mr. Foley noted that the Board Policy Resolutions caused problems for the Board and these Declaratory Decisions seemed to be very similar.

MOTION: Ms. Safran moved to take the position that the Board should not issue Declaratory Decisions. This motion died for lack of a second.

Mr. Duke recommended that the Executive Officer should advise the Board of any requests for a Declaratory Decision and that the Board should consider each request on a case-by-case basis.

10. Title Act Study Report & Task Force (Possible Action)

- a. **Final Recommendations of the Task Force regarding THE ENGINEERING TITLE ACT STUDY: The Practice/Title Act Distinction and Protection of Public Health, Safety and Welfare (referred to as**

“the Study”) to be Presented to the Board for Professional Engineers and Land Surveyors [Possible Action]

President Brandow stated that this issue will be discussed at the next Board meeting on March 5, 2004, and that Bill Gage will attend that meeting. President Brandow encouraged the Board members to review the Final Recommendations of the Title Act Study Task Force in order to be prepared to discuss any concerns at the March Board meeting.

Mr. Duffy also encouraged the Board members to thoroughly read and review the Sunset Review report and the questions being asked of the Board by the JLSRC. Ms. Christenson advised that she would send the Board members the follow-up questions from the JLSRC that focus very specifically on the ISR recommendations and what the Board believes should be done with each one.

President Brandow suggested that the Board could take the Task Force recommendations and add in the Board’s concurrence or concerns.

Mr. Wilson advised that he had attended almost all of the Task Force meetings as an observer and that much deliberation and work went into the Task Force recommendations. He noted that the Legislature is looking for the Board’s input about the recommendations and that there is quite a bit of room in the Task Force recommendations for the Board to work with the Legislature on specifics.

Mr. Roschen stated that he would not be able to attend the March Board meeting. He advised that, in concept, he is very supportive of the Task Force recommendations and believes the Board can find a way to amplify and put the Board’s stamp on those recommendations in a positive way.

Mr. Duffy noted that he had questions regarding the basic concepts and that he believes the Board should decide on the Title Acts up front.

Mr. Foley pointed out that the Board paid a lot of money to get to this point and that previous Boards have failed to do anything. He stated that he believes the Board needs to do something now or it will be put in a bad position. He suggested that the Board members think about what kind of information they would want to know about a surgeon operating on them and then apply that to people hiring engineers and land surveyors.

Ms. Safran pointed out that the Legislature took the issue of the Title Acts away from the Board because the Legislature wants to make the decision and not have the Board go through it again. She stated that she believes the JLSRC will be very distressed if the Board tinkers negatively with the Task Force recommendations.

Mr. Duffy noted that the Board was directed to look at each Title Act, but that ISR did not look at each one individually. Ms. Christenson explained that was because there was no data available and that ISR had the same problem doing its research that the Board has had in the past trying to obtain data regarding each separate Title Act; that is the purpose of the Sunrise process. Mr. Wilson pointed out that it was made clear at the Task Force meetings that the Sunrise process is not an option – the Title Acts must go through it in order to become Practice Acts. Mr. Duffy stated that evidence is needed on each Title Act before it can be decided if they should become Practice Acts or be eliminated. Ms. Christenson explained that was the purpose of the Sunrise process – to allow the presentation of such evidence.

11. Format for State Specific Structural Engineering Examination (Possible Action)

President Brandow reported that a meeting was held to discuss the format of the 2004 Structural Engineers Seismic Examination (SESE or SE²); Jay Breyer of Chauncey Group, SE² Exam Development Chairperson Mary Goodson and Co-Chairperson Nester Agbayani, President Brandow, Ms. Christenson, and Board Staff attended the meeting. With the administration of the October 2004 examinations, candidates will be required to pass both the NCEES Structural II exam and the SE².

MOTION: Mr. Duffy/Mr. Wilson moved to approve the new format for the Structural Engineering examination.

VOTE: 10-0, motion carried. Mr. Jones was not present for this vote.

13. Enforcement

a. Governor's Executive Order S-2-03 Regarding Rulemaking and Review of Regulations (Possible Action)

- 1. Effect on Rulemaking Proposals and Status of Current Rulemaking Proposals – Board Rules 404.1 & 404.2**
- 2. Review of Regulations Adopted or Amended Since January 6, 1999**

Mr. Foley advised that the Enforcement Committee had discussed the effect of the Governor's Executive Order on the Board's ability to pursue regulations. He explained that the Board cannot notice any new rulemaking proposals but can continue to discuss them until the 180-day period of the Executive Order ends in April. He also explained that Board staff has submitted the report regarding the review of all regulations adopted or amended to DCA's Legal Office, as required.

b. Possible Amendments to Board Rule 418 – Criteria for Rehabilitation (Possible Action)

Mr. Foley stated that the Enforcement Committee had directed staff to develop possible items to be included in the criteria for rehabilitation regulation for individuals petitioning for reinstatement of a revoked license and to present these items at the April Board meeting for discussion.

c. Possible Amendments to Board Rules 472.1, 473, and 473.1 – Citation and Fines (Possible Action)

Mr. Foley stated that the Enforcement Committee had directed staff to work with Mr. Duke to develop the proposed amendments to the citation regulations to increase the maximum amount of the fine to correspond with the maximum amount now allowed by statute and to clarify the regulations regarding when a case must have technical expert review before a citation may be issued; the proposed language will be presented at the April Board meeting for discussion.

14. Legislative

a. Discussion of Legislation for 2004, including but not limited to AB 1265 (Possible Action)

Mr. Duffy reported that AB 1265 is a two-year bill that was introduced last year and the Board has already taken a “watch” position on it. Mr. Duffy advised that no new legislation that might impact the Board has been introduced at this time.

b. Regulation Status Report

No additional report was given.

**15. Technical Advisory Committee Reports
(No Committee Meetings were held.)**

a. Board Assignments to TACs (Possible Action)

Staff was directed to send Title Act Study information to the TACs.

Mr. Duffy and Ms. Safran expressed concern that the TACs are only able to meet once a year and would like to look into seeing if that can be changed at an appropriate time.

b. Appointment of TAC Members (Possible Action)

No action taken.

16. Liaison Reports (Possible Action)

a. ABET

Mr. Fruchtmann advised that he had accompanied the ABET team at San Diego State University November 23-25, 2003. He advised that the new

Dean of Engineering is looking into requiring all students to take the EIT examination and that he is very proactive in licensing.

b. NCEES

Mr. Foley advised that he attended a task force meeting in Baltimore regarding fire protection engineering and design/build. He explained that design/build is an emerging field that the Board will have to address in the future; however, California has different issues with design/build than many other states because of the exemptions in our laws for contractors; he noted that the real issue is to ensure that unlicensed and unqualified people do not do design/build projects without having qualified, licensed people involved. Mr. Foley also explained that not all states have an industrial exemption, like California does, and that there are many fire protection systems/projects that involve design/build. He advised that there is only one ABET accredited fire protection engineering degree in the country now and that there are very few Fire Protection Engineers anymore. He stated that the task force developed position statements on design/build and fire protection engineering that will be presented at the upcoming NCEES Zone meetings.

c. Technical and Professional Societies

No report was given.

17. President's Report

President Brandow advised that he and Ms. Christenson had participated in two seminars sponsored by CELSOC regarding the new Codes of Professional Conduct. He stated that there were many comments and questions; he suggested that CELSOC coordinate and submit the comments to the Board for consideration.

President Brandow reported that he would be attending a meeting in Washington with representatives from the Washington and Illinois Boards to discuss the possibility of working together to develop a joint Structural Engineering Seismic Examination that might even be able to replace the Structural II examination on a national basis.

18. Executive Officer's Report

1. Administration Report

a. Executive summary report

No report was given

b. State budget

No report was given.

2. Personnel

a. Hiring freeze

Ms. Christenson reported that the hiring freeze is still in effect.

b. Vacancies

No report was given.

3. Enforcement/Examination/Licensing

a. College Outreach

Ms. Christenson advised that Eileen Crawford was only giving outreach presentations at local colleges in order to cut down on travel expenses.

b. Report on Enforcement Activities

Ms. Christenson reported that there is a backlog of enforcement complaint investigation cases due to hiring freeze.

c. Report on Examination Activities

Ms. Christenson reported that the April 2004 examinations are coming up.

4. Publications/Website

a. Website Activity Statistics

No additional report was given.

5. Sunset Review & Report

Ms. Christenson advised that the first Sunset Review hearing was held on January 7, 2004. She explained that she and President Brandow testified on about ten issues, as requested by the JLSRC; there were several issues relating to the Title Act Study that could not be addressed at the time because the Task Force and the Board were still discussing them. She explained that the Board did present two new issues of its own; one to authorize the Board to collect fingerprints and obtain criminal histories of its applicants and licensees and the other to extend the time frame in which people can petition for reinstatement of a revoked license. She stated that the JLSRC had questioned why the Board seems to spend a disproportionate amount of its budget on examinations, rather than on enforcement; she explained to the JLSRC that it is because the Board has to administer so many different examinations, rather than just one or two like other boards; she also explained to the JLSRC that the lack of authority to spend the money in the Board's reserve inhibits the Board's ability to spend more money on enforcement issues. Ms. Christenson advised that the JLSRC was very interested in hearing about the impact of the budget crisis and the hiring freeze on the Board.

Ms. Christenson further advised that there will be another Sunset Review hearing at the end of March, at which time the Board will need to submit its recommendations regarding the Title Act Study.

6. Other

a. DCA update

Ms. Christenson reported that there has been no appointment of a new Director yet.

19. Approval of Board Travel (Possible Action)

No Board Travel.

20. Other Items Not Requiring Board Action

a. Next Board meeting: March 5, 2004, Sacramento, California

President Brandow stated that the board meeting in March will start at 8:30 a.m., with the petition hearing starting at 9:30 a.m. He advised the Board members to be prepared for a lengthy meeting because the Board would be finalizing its recommendations regarding the Title Act Study at that meeting.

21. Adjourn

The Board adjourned at 12:30 p.m.

PUBLIC PRESENT

Tom Stout, CSPE

Steven Tietsworth, Center for Public Interest Law, University of San Diego

Carl C deBaca, CLSA

Richard Markuson, CELSOC

Lionel Sudds, PEGG

Terry Ramus, PATCA, CSIA

Bob DeWitt, CELSOC

R.Wayne McCoy, Miller-McCoy, Inc. Consulting Eng.